

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ITV DIRECT, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
HEALTHY SOLUTIONS, L.L.C., et al.,)	
)	
Defendants.)	
)	
CAPPSEALS, INC.,)	Civil Action No. 04-CV-10421-JLT
)	
Plaintiff-in-Intervention,)	
)	
v.)	
)	
HEALTHY SOLUTIONS, L.L.C., d/b/a)	
DIRECT BUSINESS CONCEPTS; ITV)	
DIRECT, INC.; and DIRECT)	
FULFILLMENT, LLC,)	
)	
Intervenor-Defendants.)	

SUPPLEMENTAL AFFIDAVIT OF SCOTT A SILVERMAN

I, Scott A. Silverman, being duly sworn, do hereby depose and state that:

1. My name is Scott A. Silverman, and I am an associate with the law firm of Gadsby Hannah LLP located in Boston, MA. I am counsel for the Plaintiff-in-Intervention, Cappseals, Inc. ("Cappseals"). I submit this Affidavit in support of Cappseals' Reply to Brief and in further support of its Motion for Sanctions Pursuant to Federal Rule of Civil Procedure 37(b)(2) resulting from the failure of ITV Direct, Inc. ("ITV") to comply with this Court's Order of February 1, 2005. This Affidavit also serves to place the documents described below before the court, and, to further attest, based upon personal knowledge, to the facts contained herein.
2. Attached hereto as **Exhibit A** is a true and accurate copy of the Declaration of Kial Young submitted in the action entitled, *FTC vs. Direct Marketing Concepts, Inc.*, Civil

Action No. 04-11136-GAO (the “FTC Action”).

3. Attached hereto as **Exhibit B** is a true and accurate copy of a Reply Brief filed by the FTC on December 27, 2004 in the FTC Action. Attached to the Reply Brief is a February 23, 2004 e-mail (the “February 23rd e-mail”) produced from ITV’s files. The February 23rd e-mail has never been produced in this litigation.

4. Minutes after filing Cappseals’ Motion for Sanctions on March 3, 2005 I received an e-mail from ITV’s counsel indicating that it would finally supplement ITV’s automatic disclosure of documents. On March 4, 2005 I received ITV’s production that consisted of the exact same 507 pages of documents that had already been produced through various production in 2004. Attached hereto as **Exhibit C** is a true and accurate copy of the cover letter to ITV’s March 4, 2005 production.

5. On March 9, 2005, I received from ITV a package containing seven video tapes and two audio tapes that had never been produced before. The videotapes contain footage used in various versions of infomercials ITV aired to market the Product. No transcripts were produced with the videotapes. Attached hereto as **Exhibit D** is a true and accurate copy of the cover letter to ITV’s March 9, 2005 production.

6. No attorney for Cappseals ever agreed that ITV could delay supplementation of its disclosures beyond the Court imposed deadline of February 15, 2004. In conversations with counsel for ITV I have consistently expressed our immediate need for all of ITV’s documents relating to its damages and the facts supporting their claims.

Sworn to under the pains and penalties of perjury this 21st day of March, 2005.

/s/ Scott A. Silverman
Scott A. Silverman